

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the matter of)
)
Amendment of Parts 21.3(a) and) RM-_____
21.43(a) of the Commission's)
Rules Regarding Commencement of)
Construction of Point-to-Point)
Microwave Radio Facilities)

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PETITION FOR RULEMAKING

Federal Communications Commission
Office of the Secretary

The Mountain States Telephone and Telegraph Company,
Northwestern Bell Telephone Company and Pacific Northwest Bell
Telephone Company ("MTN, NWB and PNB"), through counsel, hereby
petition the Federal Communications Commission ("Commission")
for the issuance of a Notice of Proposed Rulemaking^{1/} to amend
Subpart B of Part 21 to delete the requirements currently found
in Sections 21.3(a) and 21.43(a),^{2/} which prohibit certain
applicants from undertaking the construction of facilities prior
to the time that they receive a construction permit or
authorization from the Commission; and to add additional
language that would authorize these applicants to begin

^{1/} This Petition is filed pursuant to Section 553(e) of the
Administrative Procedure Act, 5 U.S.C. § 553(e), and
Section 1.401(a) of the Commission's rules, 47 C.F.R.
§ 1.401(a).

^{2/} 47 C.F.R. §§ 21.3(a), 21.43(a). These rules mandate
that applicants for authorizations in the Point-to-Point
Microwave Radio Facilities of the Domestic Public Fixed Radio
Services must receive a construction permit/authorization prior
to undertaking the construction of facilities.

construction after the 30-day Public Notice period has expired.^{3/}

INTRODUCTION

MTN, NWB and PNB urge the Commission to initiate a rulemaking proceeding to relax its current restrictions on the earliest date that construction of microwave radio facilities may commence. Currently, Section 21.3(a) of the Commission's rules requires that "no construction or modification of a station may be commenced without an authorization from the Commission."^{4/} Similarly, Section 21.43(a) provides that "[c]onstruction may not commence until the grant of a license[.]"^{5/} We propose that these sections be changed to allow construction of facilities after the 30-day Public Notice period has lapsed.

NEED FOR THE PROPOSED AMENDMENT

Adoption of the amendments to Part 21 which are being proposed by MTN, NWB and PNB would facilitate the initiation of service to the public by those common carriers eligible under Commission Rule Part 21. It is the intent of this Petition to facilitate and enhance the use of radio spectrum by such

^{3/} A copy of the proposed rules can be found in the Appendix attached to this Petition.

^{4/} 47 C.F.R. § 21.3(a).

^{5/} Id. at § 21.43(a).

carriers. At present, carriers are effectively prohibited from deploying proposed facilities in a timely manner, because of the necessary review processes established by the Commission. Typically, these processes consume, on average, up to five months time. This period includes mailing/handling, public notice disclosure requirements and technical review/grant. Should the Commission amend its rules, however, applicants would be able to provide service to the public more quickly; the applicants themselves would have greater flexibility in planning their construction schedules,^{6/} possibly leading to lower costs; and the Commission would be able to commit its limited resources to substantive review of applications, without getting caught up in "emergency" processing requests.^{7/}

While there are presently methods in place to permit "advanced" activity (i.e., waivers under 47 U.S.C.

^{6/} In many portions of the country, construction is only possible during a very limited part of the year because of adverse weather and site access.

^{7/} In the Notice of Proposed Rulemaking in Amendment of Part 22 of the Commission's Rules and Regulations to Allow Public Mobile Service Applicants to Commence Construction After Filing Form 401, But Prior to Receiving an Authorization, 3 FCC Rcd. 6306 (1988) ("PMS NPRM"), Report and Order, FCC 89-160, rel. Aug. 2, 1989 ("R&O"), the Commission acknowledged that its "objective" in proposing the PMS NPRM was "to give applicants greater flexibility in scheduling construction and [to] enable licensees to begin providing service to the public more quickly. The proposed rule may also result in reduced costs for both the licensees and the public. The rule would also help further the Commission's goal of eliminating unnecessary regulation." PMS NPRM, 3 FCC Rcd. at 6308 ¶ 21, 6307 ¶ 8. See also R&O at ¶ 25. MTN, NWB and PNB submit that the same objectives should pertain to the elimination of pre-authorization requirements currently found in Part 21.

Section 319(d)),^{8/} individual Commission scrutiny is required for each activity. This individualized process is counterproductive, both to the Commission and to most carriers. The Commission's resources, which are limited, get consumed in addressing individual waiver requests by carriers that know how to do their jobs and usually seek waivers to accommodate customers' needs for timely or accelerated service. If carriers had a mechanism to satisfy customer demand without engaging the Commission in an individualized, case-by-case waiver process, the resources of both parties would be put to better use.

MTN, NWB and PNB submit that there should be no delay in the actual construction process, other than during the Public Notice period. This requirement will impose minimum delay to the carrier applicant but ensures the protection of the public interest.^{9/} Should potential frequency interference or other conflicts be determined to exist, any affected party would retain the ability to seek Commission intervention during the 30-day Public Notice period.^{10/} Additionally, any unnecessary

^{8/} 47 U.S.C. § 319(d).

^{9/} This proposal does not intend that any applicant would be allowed to operate the requested facilities or permit a transmitter to radiate in advance of the final grant of authority by the Commission. Our proposal would, however, allow the applicant to receive the benefit of a flexible construction schedule while retaining the safeguards of the present limitations on system operation prior to full and complete analysis by the Commission.

^{10/} The sophisticated and accurate systems utilized today to conduct radio frequency analysis can assure virtually error-free design when used in conjunction with the full disclosure provisions of Section 21.100(d). See 47 C.F.R. (Continued on page 5)

expenses resulting from the return or dismissal of an application would be charged back to the shareholders, rather than to the rate base.^{11/}

Today's competitive environment demands new and more efficient methods of conducting our business in order to satisfy increased customer demand. Carriers have limited ability to satisfy customer demand for expedited installation of facilities. Time frames are dictated by events and customer expectations beyond the carriers' immediate control.

Furthermore, with the Commission's present and limited future resources, addressing the growing burden of applications will become increasingly difficult. MTN, NWB and PNB's proposed change will allow the Commission to concentrate on reviewing substantive technical content and addressing the accuracy and completeness of public disclosures. At the same time, the proposed changes would place an increased responsibility on the applicant carrier to assure that all preparatory work was done satisfactorily, so as to minimize the risk to its shareholders from unforeseen circumstances or engineering omissions.

^{10/} (Continued from page 4)
§ 21.100(d). The number of cases of competing or unresolved application conflicts is presently very slight, which demonstrates further the reasonableness of this proposal. The Commission's existing rules already address how contested cases should be handled, and we do not propose any changes to those rules here.

^{11/} This is the same way in which such expenses are handled when a carrier pursues the Section 319(d) "waiver" process, discussed previously. See 3-4 and n.8 supra.

We believe this proposed modification of the rules would be in the public's best interest. We ask the Commission to propose a modification to its Rules 21.3(a) and 21.43(a), thereby moving to a more balanced and uniform approach to processing that allows common carriers more control over their construction intervals and more responsibility for both the accuracy of their work and customer satisfaction.

CONCLUSION

As described above, MTN, NWB and PNB submit that the public interest would be served by deleting the pre-authorization requirements currently found in Commission Rules 21.3(a) and 21.43(a). Such requirements no longer exist in regards to Public Mobile Service ("PMS").^{12/} In addition, no

^{12/} On August 19, 1986, Telocator Network of America ("Telocator") filed a Petition for Rulemaking to modify Section 22.43(a) as it pertained to Public Land Mobile Service ("PLMS"). See Amendment of Part 22 of the Commission's Rules and Regulations to Delete the Construction Permit Requirements in the Public Land Mobile Service, RM-5554. The Commission put the Telocator Petition out for Public Notice. Public Notice No. 6711, rel. Sept. 3, 1986. MTN, NWB and PNB filed comments supporting that Petition. See Comments of MTN, NWB and PNB, filed Oct. 6, 1986. U S WEST NewVector Group, Inc. (then d/b/a NewVector Communications, Inc.) also filed comments. See Comments of New Vector Communications, Inc., filed Oct. 6, 1986. The other filing parties were in general agreement with the Telocator Petition. See generally Comments of BellSouth Corp., Pacific Telesis and Southwestern Bell Telephone Co., all filed Oct. 3, 1986.

In October of 1988, the Commission issued a Notice of Proposed Rulemaking to revise Section 22.43(a)(1) of its rules to permit all applicants in the PMS, both cellular and non-cellular, to benefit from the rule revisions proposed by Telocator. See n.7 supra. U S WEST NewVector Group, Inc. filed Comments in support of such proposal, suggesting several
(Continued on page 7)

such similar requirements can be found in the Domestic Public Fixed Radio Services that are part of Private Land Mobile Radio Services (Part 90)^{13/} or Private Operational Fixed Services (Part 94).^{14/} Furthermore, the elimination of such requirements has been proposed in relation to Satellite Communications Services (Part 25).^{15/}

This Petition proposes that the Commission treat Domestic Public Fixed Radio Services similarly to those mentioned above. MTN, NWB and PNB propose that Commission Rule Sections 21.3(a) and 21.43(a) be modified to permit an applicant to commence physical construction of new or modified radio

^{12/} (Continued from page 6)
modifications. See Comments of U S WEST NewVector Group, Inc., filed Dec. 19, 1988. The other filing parties were generally supportive of the Commission's proposal. See generally Comments of ALLTEL Mobile Communications, Inc., Bell Atlantic Mobile Systems, Inc., BellSouth Corp., Public Utilities Commission of the State of California, Centel Cellular Co., GTE Service Corp., McCaw Cellular Communications, Inc., NYNEX Mobile Communications Co., PacTel Cellular, PacTel Paging, Inc., Pacific Bell and Nevada Bell, Providence Journal Telecommunications, Inc., Southwestern Bell Corp., Telocator and Vega Cellular Consultants, all filed on or about Dec. 19, 1988. The Commission, just recently, granted the relief requested by Telocator in its Petition, as modified by the Commission's own suggestions, and declared an amendment of its rules for all applicants in the PMS. See n.7 supra. The relief that MTN, NWB and PNB request herein in regards to Part 21 is similar to that recently granted by the Commission regarding Part 22.

^{13/} See 47 C.F.R. § 90.143.

^{14/} See id. at § 94.37.

^{15/} See Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communication Services, 2 FCC Rcd. 762 (1987), proposing to amend 47 C.F.R. § 25.113.

facilities following successful completion of the applicable
Public Notice disclosure period.

Respectfully submitted,

THE MOUNTAIN STATES TELEPHONE AND
TELEGRAPH COMPANY
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September 8, 1989

APPENDIX

APPENDIX

Subpart B -- Applications and Licenses

General Filing Requirements

21.3 Station authorization required.

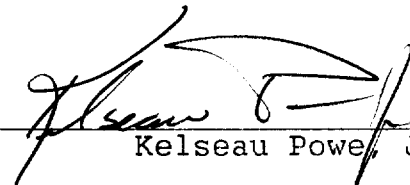
- (a) No person shall use or operate apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission. Authorizations for domestic public fixed radio services are governed by the provisions of this Part.

21.43 Period of construction; certification of completion of construction.

- (a) An applicant for authorization in the Point-to-Point Microwave Radio Facilities of the Domestic Public Fixed Radio Services may begin construction of facilities 30 days after the Public Notice period. Each license for a radio station for the services included in this Part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. Construction must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by 21.45(b) or otherwise determined by the Commission for any particular application, the following shall be the maximum construction periods for each service:
 - (1) For stations in the Point-to-Point Microwave Radio and Digital Electronic Message Service, a maximum of 18 months from the date of the license grant;
 - (2) For all other/stations licensed under this Part, a maximum of 12 months from the date of the license grant.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 8th day of September, 1989, that I have caused a copy of the foregoing PETITION FOR RULEMAKING to be hand delivered, to the persons named on the attached service list.


Kelseau Powe, Jr.

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